IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2063 OF 2004

1. The Trustees of the Parsi Panchayat Funds
   & Properties, Bombay having their
   Reg. Address at 209, Dr.Dadabhai
   Nawrojee Road, Fort, Mumbai-400 001.

2. Mr. Minoo Rustomji Shroff,
   Age 74 yrs, Occu. Director.

3. Mrs. Silloo Kaikhushru Kavarana
   Age 84 yrs. Occ. Social Worker.

4. Mr. Dinshaw Rusi Mehta,
   age 60 yrs, Occ. Business.

5. Mr.Dadi Bejonji Engineer,
   Age 70 yrs, Occ.Advocate & Solicitor.

6. Mr. Dinshaw Kaiki Tamboli,
   Age 58 yrs, Occ.Business.

7. Mr.Maneck Hormusji Engineer,
   Age 64 yrs. Occ. Service.

8. Mr.Burjor Hormusji Antia,
   Age 69 yrs. Occ.Advocate & Solicitor,
   Petitioner Nos.2 to 8 being the
   present Trustee of the Parsi
   Panchayat Funds & Properties,
   Bombay, having their office
   situate at 209, Dadabhai Naoroji
   Road, Fort, Mumbai-400 001. ...Petitioners.

Vs.

1. Municipal Corporation of Greater Bombay, a Corporation Constituted under the provisions of Bombay Municipal Corporation act, 1888, having its office at Mahapalika Building, Mahapalika Marg, Mumbai-400 001.

2. Municipal Commissioner, having his office at Mahapalika Building, Mahapalika Marg, Mumbai-400 001.

3. Dy. Municipal Commissioner (Zone-1), Mahapalika Building, Mahapalika Marg, Mumbai-1.

4. Assessor and Collector, A-Ward, having his office at Mahapalika Building, Mahapalika Road, Mumbai-1. ....Respondents.

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Mr. V. Savji with Sudarshan Singhrani for the Petitioners.
Ms. A. K. Savla for the Respondents.

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CORAM : DALVEER BHANDARI,C.J. &
DR.D.Y.CHANDRACHUD, J.

August 19, 2004.

ORAL JUDGMENT (PER DALVEER BHANDARI, C.J.):

This petition has been filed by the Trustees of the Parsi

Panchayat Funds and Properties in which they have prayed for a direction to the respondents to cancel or withdraw their illegal demand of recovery of property tax and repair cess for the period from 1.4.1995 to 31.3.1998 and penalty levied against the petitioners.

2. This Court issued a show cause notice and pursuant to the show cause notice, a reply has been filed by Vijay Shankar Panchal, working as Assistant Assessor and Collector, Mumbai. In the reply it is mentioned that this petition raises disputed questions of facts which cannot be gone into in the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution. The deponent has also submitted that the petitioners have a statutory remedy under Section 217 of the Mumbai Municipal Corporation Act, 1888 and in view of the alternative efficacious remedy, the petitioners cannot invoke the jurisdiction of this Court under Article 226.

3. The petitioners made complaint for the first time on 24th November 1997 and soon thereafter complaint was duly

adjudicated by a reasoned order and the rateable value was reduced to Rs.8,255/-. The complaint of the petitioners is only confined to the period from 1-4-1995 to 31-3-1998. According to the petitioners when the ratable value has been reduced from 1.4.1998, on the same principle the petitioners are entitled to get benefit of three preceding years from 1-4-1995 to 31-3-1998. The Learned Counsel appearing for the respondents submits that the petitioners at no point of time made any complaint regarding rateable value for Assessment Years 1995-96, 1996-97 and 1997-98. Accordingly for the first time the complaint was made on 24th November 1997 which was duly adjudicated and the petitioners were granted relief. As far as the period 1-4-1995 to 31-3-1998 is concerned, all assessments have been finalised and at this stage, it cannot be reopened. We find considerable force in the submission of the Learned Counsel for the respondents.

4. It may be pertinent to point out that Exhibit-A is a letter dated 13th December 1996 sent by the petitioner-society to the Assistant Assessor and Collector asking the concerned authority to

send them the regular property tax and repair cess bills in order to enable them to deposit the amount immediately. Similarly, another letter dated 14th January 1997 sent by the petitioners is also to the same effect. The petitioners had sent yet another letter on 11th February 1997. In this letter also the petitioners have demanded details of property tax and repair cess bills from the Assistant Assessor and Collector. Only on 24th November 1997 for the first time, they have made a complaint regarding the ratable value which was duly adjudicated by the respondents. The assessments of preceding years which have been duly finalised several years ago cannot be now reopened.

5. Since we have decided this matter on merits, therefore, we do not deem it appropriate to relegate the petitioners to the statutory remedy available under Section 217 of the Mumbai Municipal Corporation Act, 1888. The petition being devoid of any merit, is accordingly dismissed.

6. In the facts and circumstances of the facts, we direct the

parties to bear their own costs.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.